REMARKS

Claims 1-30 remain pending in the instant application. Claims 1-30 presently stand rejected. Claims 1, 7, 15, and 24 have been amended. No new matter has been added because claim 1 incorporates the limitations of former claims 5 and 6, claim 7 now directly depends from claim 1 rather than claim 5, claim 15 incorporates the limitations of former claim 21, and claim 24 incorporates the limitations of former claim 25. The rejections of the amended independent claims are addressed in accordance with the previous rejections of the associated dependent claims. For purposes of searching, applicants submit the amended independent claims have a scope that is substantially similar to one of canceled claims 6, 21, and 25. Claims 5, 6, 21, and 25 have been canceled. Reconsideration of the pending claims is respectfully requested.

Claim Rejections – 35 U.S.C. § 102

Claims 1, 8-20, 23-24, and 28-30 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Goss et al. (US 2005/0044207). Claims 1, 15, and 24 have been amended with limitations previously rejected under § 103. Accordingly, the § 102 rejections are moot.

Claim Rejections – 35 U.S.C. § 103

Claims 2-4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Goss, as applied to claim 1, in view of Spring (US 6,549,943).

Claims 5, 22, and 25-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Goss, as applied to claims 1, 15, and 24, in view of Chen et al. (US6,591,324).

Claims 6-7 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Goss in view of Chen, and further in view of Chrabaszcz (US 6,212,585).

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Goss, with respect to claim 24, in view of Hawkins et al. (US 2003/0130969).

The combinations of references cited above do not cure the deficiencies of Goss. Goss has a publication date of Feb. 24, 2005, which is after the filing date of the instant invention. In accordance with the reasons stated below), the record does not properly resolve the level of one of ordinary skill in the art at the time the invention was made as is required to objectively determine obviousness.

With respect to the publication date of Goss, the Examiner states the "applicant argues that the reference be disqualified" in applicants' previous response. Applicants respectfully traverse this characterization of applicants' argument (and the ensuing reasoning, which is not directed to applicants' actual argument, and is thus inapposite as a "straw man argument"). Applicants argue that the response (and thus the record) has not properly resolved the level of skill of a person having ordinary skill in the art at the time of the invention. Applicants submit that citing a 102(e) reference (cf., 37 CFR §1.104(c)(4)) does not sufficiently satisfy the legal requirement of properly resolving the level of ordinary skill in the pertinent art at the time the invention was made for (at least) the reasons stated below.

MPEP 2141.03 section III states in relevant part:

> The importance of resolving the level of ordinary skill in the art lies in the necessity of maintaining objectivity in the obviousness inquiry." Ryko Mfg. Co. v. Nu-Star, Inc., 950 F.2d 714, 718, 21 USPQ2d 1053, 1057 (Fed. Cir. 1991). The examiner must ascertain what would have been obvious to one of ordinary skill in the art at the time the invention was made, and not to the inventor, a judge, a layman, those skilled in remote arts, or to geniuses in the art at hand. Environmental Designs, Ltd. v. Union Oil Co., 713 F.2d 693, 218 USPQ 865 (Fed. Cir. 1983), cert. denied, 464 U.S. 1043 (1984)(emphasis added).

Applicant has seasonably traversed the obviousness rejection based on Goss because Goss has a publication date of Feb. 24, 2005, which is after the filing date of the instant invention. Applicants submit that the recitation of unpublished art does not show that which is to be held to be in confidence by the USPTO is known by a person having ordinary skill in the relevant art at the time of the invention. Further, the response does not establish that Goss is a person having ordinary skill in the relevant art at the time of

the invention, and does not show, for example, that he is not one of the "geniuses in the art at hand" (id.). Accordingly, Applicants respectfully submit that the Office Action has not established a prima facie case of obviousness.

Further to establishing a prima facie case of obviousness, MPEP 2141 section II states in relevant part:

> As reiterated by the Supreme Court in KSR, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries. The factual inquiries enunciated by the Court are as follows:
>
> (A) Ascertaining the differences between the claimed invention and the prior art; and [sic]
>
> (B) Ascertaining the differences between the claimed invention and the prior art; [sic] and
>
> (C) Resolving the level of ordinary skill in the pertinent art (emphasis added).

Additionally, MPEP 2141 section II states in relevant part:

> Office personnel fulfill the critical role of factfinder when resolving the Graham inquiries. It must be remembered that while the ultimate determination of obviousness is a legal conclusion, the underlying Graham inquiries are factual. When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. Factual findings made by Office personnel are the necessary underpinnings to establish obviousness.
>
> Once the findings of fact are articulated, Office personnel must provide an explanation to support an obviousness rejection under 35 U.S.C. 103. 35 U.S.C. 132 requires that the applicant be notified of the reasons for the rejection of the claim so that he or she can decide how best to proceed. Clearly setting forth findings of fact and the rationale(s) to support a rejection in an Office action leads to the prompt resolution of issues pertinent to patentability.

> In short, the focus when making a determination of obviousness should be on what a person of ordinary skill in the pertinent art would have known at the time of the invention, and on what such a person would have reasonably expected to have been able to do in view of that knowledge. This is so regardless of whether the source of that knowledge and ability was documentary prior art, general knowledge in the art, or common sense" (emphasis added).

Here, Goss is documentary prior art, and mere recitation of documentary prior art (especially documentary prior art that was held in confidence by the USPTO at the time of the invention) does not properly determine obviousness as highlighted immediately above. Accordingly, applicants respectfully submit that the Office Action has not established a prima facie case of obviousness because of a failure to maintain objectivity by properly resolving the level of skill of a person having ordinary skill in the relevant art at the time of the invention.

Thus, the obvious rejections relying upon Goss are improper. Accordingly, Applicants respectfully request that the §103(a) rejections of the claims be withdrawn.

The dependent claims are nonobvious over the cited references for at least the same reasons as discussed above in connection with their respective independent claims, in addition to adding further limitations of their own. Accordingly, Applicants respectfully request that the instant § 103 rejections of the dependent claims also be withdrawn.

CONCLUSION

In view of the foregoing remarks, Applicants believe the applicable rejections have been overcome and all claims remaining in the application are presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 292-8600 if the Examiner believes that an interview might be useful for any reason.

CHARGE DEPOSIT ACCOUNT

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a). Any fees required therefore are hereby authorized to be charged to Deposit Account No. 02-2666. Please credit any overpayment to the same deposit account.

Respectfully submitted,

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Date: August 20, 2008

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CERTIFICATE OF MAILING/TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically via EFS-Web to the United States Patent and Trademark Office on the date shown below.

/Elizabeth J. Martinez/ August 20, 2008
Elizabeth J. Martinez *Date*